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Supreme Court of the United States

OCTOBER TERM, 1960

No. 825

ALATEX CONSTRUCTION SERVICE, INC.,
COMMUNITY FINANCE SERVICE, INC.,
PUBLIC DISCOUNT COMPANY, INC.,
Appellants,

versus

ERNEST CRAWFORD,
Appellee.

(CONSOLIDATED CASES)

On Appeal from the Court of Appeal, Fourth Circuit, State of Louisiana.

MOTION TO DISMISS AND BRIEF IN SUPPORT OF MOTION TO DISMISS.

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(CONSOLIDATED CASES)

On Appeal from the Court of Appeal, Fourth Circuit, State of Louisiana.

MOTION TO DISMISS.

Ernest Crawford, Appellee in the above entitled case, moves to dismiss on the grounds that:

(1) The federal question is so unsubstantial as not to warrant further argument,

(2) The federal question was not expressly passed upon by the courts of the State of Louisiana,

(3) The decision rests wholly on adequate non-federal grounds, without conflict with federal law, and the alleged federal question was not properly raised under Louisiana practice.

BRIEF IN SUPPORT OF MOTION TO DISMISS.

I.

STATEMENT OF THE CASE

Appellee filed three suits in the First City Court of the City of New Orleans seeking to recover $551.00 from Public Discount Company, Inc., $300.00 from Alatex Construction Service, Inc., and $486.50 from Community Finance Service, Inc., with interest and court costs from each.

The identical original petitions alleged that the sum of money claimed by Appellee was the amount received by the individual Appellant from one Sam Davis, being the amount in which he was in default upon pre-existing debt owed by him to Appellant.

Further, the petitions state that in each instance Davis "was without funds to make such payment; that the money with which the payment was made had been stolen from Appellee by Davis acting in concert and conspiracy with others."[1]

Appellants answered, admitting receiving the particular sums of money from Davis in payment of his debt to them, but denying Plaintiff-Appellee's claim. Each Appellant filed an exception of no cause or right of action.

The three cases were consolidated. The Trial Court referred the exceptions to the merits and the court heard all of the evidence and received all documents offered, including the depositions of the thieves, Sam Davis and Ophelia Johnson, in which they admitted paying Appellants with the money taken from Crawford.

[1] The original petitions contained a typographical error to the effect that money had been stolen by "defendant." This was amended at the trial by plaintiff to correctly reflect the allegation that the theft was by "Sam Davis acting in concert and conspiracy with others."

There was no issue as to the facts, as Appellee placed in the record all of the evidence. Appellants did not seek to contradict the evidence or raise any issue of fact, placing neither witnesses on the stand nor documents in the record.

Appellants below defended, originally on two legal grounds. They urged in the Trial Court that Appellee had no cause of action because the Louisiana Civil Code Article (2139) upon which his claim was based was in conflict with the Code article immediately preceding it (2138), and either 2139 should be ignored due to the conflict, or 2138 should govern. Secondly, Appellants relied upon a 1909 Louisiana case as controlling[2] and removing Appellee's cause of action. **There was no hint of any federal question raised in the Trial Court, although the case was heard on the merits, argued and briefed in detail by all parties.**

The Trial Judge subsequently maintained the exceptions of no cause of action and dismissed Appellee's suits without written opinion. Appellee appealed to the Court of Appeal of the Parish of Orleans (now the Court of Appeal, Fourth Circuit, State of Louisiana). In a decision at 120 So. 2d 845, the Court of Appeal unanimously reversed and rendered judgment in favor of Appellee. Since this case had been tried on the merits below and the record was complete, the court rendered final judgment for the amount claimed in each petition against each defendant. On rehearing, with one dissent, the court, with a brief opinion, reinstated the original judgment, at 120 So. 2d 852. Appellants sought writs of review in the Supreme Court of Louisiana but writs were unanimously denied on October 5, 1960, with the comment that, "The judgment of the Court of Appeal is correct."

[2] *First National Bank of Birmingham v. Gibert & Clay*, 123 La. 845, 49 So. 593, (1909).

II.

THE FACTS

Since the facts are not in dispute in this appeal, and have been concisely set out in the original opinion of the Court of Appeal,[3] Appellee will not burden the Court by recounting them in detail. In essence the facts were: Ernest Crawford, a Negro construction worker, was the victim of a theft of $20,120.00, his life's savings, by two thieves acting in conspiracy, Sam Davis and Ophelia Johnson. The thieves fled the State with the cash after Davis thoughtfully protected his credit in New Orleans by paying three of his creditors what he and Ophelia owed them with the stolen money. The thieves were apprehended by the F.B.I. in Michigan, where they had disposed of most of the money. They were tried and convicted, in the Federal District Court in New Orleans, of transporting stolen money interstate. They admitted, in a deposition that was introduced in the Trial Court in this case, that they paid their debts to Appellants with the stolen money.

III.

THE STATE LAW INVOLVED

The Court of Appeal stated as follows:

> "When seeking to resolve a dispute in Louisiana we must first look at the law of this State to find

[3] Although Appellants seem to infer in their statement of selected facts that there were questions of fact, the Court of Appeal noted: "We find, also, *that the evidence fully supports plaintiff's allegations.* Actually, in this Court, counsel for defendants do not dispute that the pre-existing debts of Sam Davis were paid with money stolen from this plaintiff with Davis' full knowledge of the theft. A further recitation of the undisputed evidence would be quite lengthy and under the circumstances would serve no useful purpose here. Counsel for defendants rested their defense on the admitted good faith of all the defendants and upon common law jurisprudence except one Louisiana case which will be referred to hereinafter and Article 2138 of the Civil Code, L.S.A." (Emphasis added) Original Decision of the Court of Appeal of Orleans Parish, by Judge Jess Johnson, page 22 of Appellant's Jurisdictional Statement.

if there are any provisions of Louisiana law determinative of the issue. If there is, we are compelled to apply and follow that law before looking to foreign court decisions. There is positive Louisiana law applicable to the facts in these consolidated cases. It is Civil Code Article 2139 which reads as follows:

> **'If money, or other stolen property, be given in payment, the payment is not good, and the owner may recover the amount paid.'**

"The language of this provision is so clear and unambiguous that we must be governed by it unless there has been some radical departure in the English translation from the original text which does not bring into English a clear meaning of the law. We find no such error.'

Original Decision of the Court of Appeal, page 22 of Appendix A of Appellants' Jurisdictional Statement.

IV.

ARGUMENT

1. *The First Federal Question Presented*

The first federal question Appellants claim this decision raises is:

> "(1) Whether the Court of Appeal for the Parish of Orleans, Louisiana, **failed to recognize that United States currency is legal tender for all debts, public and private,** with the result that the Court's decision impairs the use of United States Currency in derogation of the Laws of the United States."
>
> (Emphasis added) Appellants' Jurisdictional Statement, at page 6.

The gist of Appellants' argument is set out on page 11 of their jurisdictional statement:

> "The decisions allowing recovery on the part of

> Appellee herein are tantamount to a judicial pronouncement that United States currency was not in these cases legal tender in payment of all debts, public and private; and insofar as good faith receivers of the stolen money were concerned, the United States Federal Reserve Notes and Silver Certificates were not 'payable on demand to bearer'—all in contravention of the provisions of 31 U.S.C., Section 462."

The decision of the state court under attack here certainly does not **expressly** say what Appellants claim it does. The next consideration should be whether there is an implication that:

(1) United States currency is not legal tender,

(2) Good faith receivers of stolen money may not redeem that money for silver.

Considering both accusations together, the very facts of this case negate the Appellants' charges. The **particular currency** stolen, and later paid to the Appellants, **may have, since 1955, passed again and again, after that critical payment, into a thousand consecutive hands.** The Louisiana Code article and the state court decision are unconcerned with the past, present or future whereabouts of the stolen money, since there is no implication that the particular stolen bills must be given back to the true owner, but merely the provision that the true owner may recover "the amount" paid. **That it has been legal "to tender" and to redeem these bills since their printing and issuance is not in dispute.** However, in Louisiana, if stolen money is used by the thief in payment of pre-existing debts, then an obligation arises between creditor and true owner—an obligation that is wholly independent of and indifferent to the whereabouts or very existence of the original stolen bills.

Conversely, Louisiana Civil Code Article 2139, and the state court decision, do not provide or hold that federal currency, once having been the object of a theft, is henceforth unredeemable or **illegal to tender** for any debts. The Louisiana Code article and the decision make no provision in respect to the status of the stolen medium with which the critical payment is made. There is no attempt to taint the stolen object or to impair its subsequent negotiable value. The Louisiana Code article concerns itself solely with the obligations that arise subsequently between "le proprietaire" (the true owner), a creditor, and that singular, narrow breed of debtor and possessor, the thief. In this most narrow of circumstances,[4] the thief's debt is not existinguished (for the protection of his creditor) and the true owner may recover "the amount" from the creditor who received the stolen object. Hence, the alleged impairment of federal currency as legal tender or in its redeemable quality is not a valid issue here, as Article 2139 implies no contamination of the stolen object, whether it be money or property, granting only a cause of action to recover "the amount." This simple distinction is the short answer to Appellants' first federal question presented; however, despite the fact that this case has been argued three times and briefed at least six times, Appellants, like the Bellman in "The Hunting of the Snark."[5] persist in their factually incorrect argument that the Code article and the decision below allow recovery of the stolen money. In their final summation Appellants again urge:

> "The Court of Appeal for the Parish of Orleans has placed a restriction upon the free circulation and use of United States currency for the pay-

[4] This is the first reported case in which this article of the Louisiana Civil Code has ever been applied since its introduction into Louisiana law in 1825.

[5] The Bellman, it will be recalled, stated: "I have said it thrice; what I say three times is true."

ment of all debts, public and private, **by decreeing that Louisiana Civil Code Article 2139 permits a person from whom money is stolen to recover it in the hands of a good faith receiver.'**

(Emphasis added) Appellants' Jurisdictional Statement, at pages 16 and 17.

Yet the text of Article 2139 and the decision below show conclusively that neither pretends to allow a person from whom money is stolen **to recover "it"** in the hands of a good faith receiver, as Appellants erroneously urge. The article and the decision below merely give a cause of action for the **amount** involved. Such a cause of action does not bear upon the legality of tendering currency of the Federal Government in payment of debts or redeeming currency for silver. Still Appellants claim that Article 2139 and 31 U.S.C. 462 pose a conflict which is "apparent on its face and inherent in the decisions."[6] As to the alleged conflict, a study of the context in which the state statute appears will reveal that Article 2139 appears in Book III, Title IV, Chapter 5, Section 1, Paragraph 1 of the Louisiana Civil Code.[7] Book III is entitled "Of the Different Modes of Acquiring the Ownership of Things," Title IV is concerned with "Conventional Obligations," Chapter 5 is entitled "Of the Manner in Which Obligations May Be Extinguished," Section 1 deals with the subheading "Of Payment," and finally, Paragraph 1 is concerned with "Of Payment or Performance in General." It is plain from the position of the article in the Code and its context of surrounding Code articles that it deals only with obligations between individuals.

In contrast, a similar analysis of 31 U.S.C. 462 re-

[6] Page 8 of Appellants' Jurisdictional Statement.

[7] The Louisiana Civil Code is officially divided into "Books," "Titles," "Sections," "Paragraphs," and finally, "Articles."

veals that Title 31 deals generally with "Money and Finance."[8] Section 462 appears in Chapter 9, "Legal Tender" and the sections preceding and following 462 all concern themselves with establishing the monetary system of the Federal Government. From Section 463 it is apparent that the purpose and effect of the entire chapter, with its repeated command that the various types of paper money and coinage are all "legal tender," is to insure a uniform national currency of unchanging value, each piece of which is to be given the value indicated on its face without preference as to whether it be paper currency or hard coin. Those sections of the chapter relating to paper currency had their origin in "The Legal Tender Acts" of Congress of July 11 and February 25, 1862.[9] But for these Acts of Congress, as amended, pledging the credit of the Government of the United States, there would be no legal effect to a "tender" of payment with such instrinsically worthless paper. The original "Legal Tender Acts" caused a constitutional is-

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[8] The chapter headings of this Title are: The National Budget and Audit System, Accounting and Auditing, Audit and Settlement of Accounts, The Treasurer, The Register, The Bureau of Engraving and Printing, Debts Due by, or to, the United States, Bureau of the Mint, Mints and Assay Offices, Coins, Coinage and Currency, Legal Tender, Public Moneys, Appropriations, The Public Debt, Credit and Currency Expansion, Financial Control of Government Corporations.

[9] The Legal Tender Acts, February 25, 1862, Chapter 33, 12 Stat. 345 and July 11, 1862, Chapter 142, 12 Stat. 532, as subsequently amended, finally evolved into the various sections of Title 31 U.S.C. By joint resolution on June 5, 1933, Chapter 48, 48 Stat. 113, Congress gave as the purpose and intent of the most recent amendment of what is known as the "legal tender laws":

> "Whereas the holding of or dealing in gold affect the public interest, and are therefore subject to proper regulation and restriction; and
>
> Whereas the existing emergency has disclosed that provisions of obligations which purport to give obligee a right to require payment in gold or a particular kind of coin or currency of the United States, or in an amount in money of the United States measured thereby, obstruct the power of the Congress to regulate the value of the money of the United States, and are inconsistent with the declared policy of the Congress to maintain at all times the equal power of every dollar, coined or issued by the United States, in the markets and in the payment of debts. Now, therefore, be it * * *"

sue to arise as to the right of the Government to establish paper currency under the grant of power from Article 1, Section 8, Clause 5, of the Constitution, "to coin money, regulate the value thereof * * *." The issue was specified in the "**Legal Tender Cases**" by Mr. Justice Strong to be:

> "* * * But in both cases the fundamental question, that which tests the validity of the legislation, is, can Congress constitutionally give to Treasury Notes the **character and quality of money?**"
>
> (Emphasis added) *Knox v. Lee*, and *Parker v. Davis* (Legal Tender Cases), 12 Wall. 457 at 530.

From the issue arising out of the original enactment of what is now 31 U.S.C. 462 *et seq.*, we learn that the purpose of the law itself was simply to give to paper currency the legal quality of money backed by the assets of the United States Treasury, and to make it as legal **to tender** paper currency in payment of debts as it would be to tender gold, silver or any other object with an instinsic value of its own.

Such intent and purpose is in no manner contrary to or in conflict with a state statute that creates a narrow cause of action or an obligation between two persons, the creditor of a thief and the thief's victim. Appellee submits that Judge Janvier of the Court of Appeal was correct in his Certificate of Consideration of Federal Question, wherein he stated that:

> "* * * the said Federal Question was reviewed and considered by this Court, but Article 2139 was not found to be in conflict with the Federal Statute, as urged by Counsel for Defendants."
>
> Appendix C, Appellants Jurisdictional Statement at page 48.

2. *The Second Federal Question Presented*

The second "question presented" by the appeal of Appellants offers a legal paradox.[10] It poses the thought that the state court reached incorrect conclusions of law in holding that Louisiana's Negotiable Instruments Law has no application to United States currency.

Despite the recognition by Appellants, at page 12 of their own brief, that, " * * * the status of Federal currency is a matter exclusively within the control of the Federal Government, and that the states are powerless to enact legislation limiting the exchangeability of currency," they contended in the appellate courts of Louisiana, and now urge in this Court, that United States currency is controlled by the State Negotiable Instruments Act. This strange contention evolved out of the Appellants' attempt to judicially repeal Article 2139 by raising a conflict between that Article and the State's Negotiable Instruments Law.[11] Having donned the protective armor of a holder in due course under the Negotiable Instruments Law of instruments (the original stolen bills?) which they never alleged that they still possessed, Appellants sought to convince the state court that the Code article conflicted with the protection given a good faith holder in due course under the Negotiable Instruments Law, and therefore was obsolete and repealed by implication by the later statute.

In replying, Appellee pointed out to the Court of Appeal that:

(1) Appellants' establishing themselves as having

[10] "(2) Whether the Court of Appeal for the Parish of Orleans, Louisiana, reached improper and incorrect conclusions of law in support of its finding that the Negotiable Instruments Law of the State of Louisiana has no application to United States currency, despite the clear language of 31 U.S.C. 462 importing the highest degree of negotiability to United States currency.

[11] Louisiana Revised Statutes, Title 7, Section 1 *et seq.*

been one-time "good faith holders in due course" of the money, or "instruments," was completely immaterial, since neither Appellants nor Appellee were concerned with the particular stolen bills, or "instruments." Neither party was suing on an instrument. The decision below did not question Appellants' (or anyone else's) right to demand gold or silver from the United States Treasury on presentation of these bills (if Appellants still possessed the stolen bills). Nor did the decision prevent Appellants from "renegotiating" those particular stolen bills to other persons (as they undoubtedly did, long before suit was even filed), or doing any of the things a "holder in due course" is entitled to do with instruments he holds. In fact, it is obvious that since 1955, when Appellants came into possession of the original stolen money, that those particular bills have probably passed out of the hands of the Appellants through thousands of hands and have been "negotiated" untold times. (This assumption, made in argument before the Court of Appeal, was undenied and unrebutted by Appellants). Therefore, for this reason, primarily, there was no conceivable conflict between Article 2139 and the State Negotiable Instruments Law. It is to be noted here that there is a complete absence of any semblance of a federal question raised by the alleged conflict between the two state statutes, as originally urged by Appellants and rebutted by Appellee.

(2) Secondly, Appellee urged to the state court that, in addition to the lack of conflict between the Negotiable Instruments Law and Article 2139, it was folly to argue that a state, through the medium of a "negotiable instruments law," could, in the most minute detail, regulate **federal currency.** Obviously, the Congress of the United States has preempted the field of regulation of its own currency to the complete exclusion of state regulation.

Garner v. Teamsters Union, 346 U.S. 485; *Mississippi Valley Electric Co. v. Teamsters Local 270*, 229 La. 37, 85 So. 2d 22; *Garmon v. San Diego Building Trades Counsel*, 359 U.S. 236; *Weber v. Anheuser Busch*, 348 U.S. 468.

(3) Finally, Appellee made an additional point, which was entirely superfluous to the disposal of Appellants' contention here, to the effect that it was entirely questionable whether or not federal currency was **the type** of a negotiable instrument intended to be governed by a "negotiable instruments law" of any state, since currency was really **the object for which commercial negotiable instruments issue.** As evidence of this, it was pointed out that the definition of the "instruments" regulated by the Louisiana Negotiable Instruments Law provided that such commercial paper, notes, etc., must be signed by the maker,[12] whereas United States currency bears only a facsimile signature. This distinction may have been completely superficial and, indeed, the entire point was superfluous; however, the state court mentioned it in their original decision, not by any means making the absurd holding that federal currency was non-negotiable, as Appellants urge, but merely **to illustrate that a state negotiable instruments law was never intended to apply to federal currency.**

However, shifting then from their original unsuccessful attempt to create a conflict between two state statutes, Appellants, on rehearing before the Court of Appeal, and now before this Court, seize upon this dictum in the state court's original decision, lift it out of context and exaggerate it into a substantial federal question that will rock the economy of the nation. However, the essential thrust of the court's opinion below was:

[12] Louisiana Revised Statutes, Title 7, Section 1(1).

> "On the other hand, Article 2139 says squarely that if the money or other property given in payment be stolen, then the owner may recover **'the amount'** paid. We must take the law as we find it. Article 2139 deals with **recovery of the amount or value of the owner's claim, rather than recovery of the identical thing or money in specie** under Article 2139."
>
> (Emphasis added) Court of Appeal's Original Decision of November 30, 1959; Page 30 of Appellants' Appendix A.

Following this, any decision as to whether or not federal currency was the type of instrument intended to be covered by a state negotiable instruments law was unnecessary to the determination of this cause. Mr. Chief Justice Hughes stated in 1934:

> "It is essential to the jurisdiction of the court in reviewing a decision of a court of a state that it must appear affirmatively from the record, not only that a federal question was presented to the highest court of a state having jurisdiction, but that its decision of the federal question was necessary to the determination of the cause, and that it was actually decided, or that the judgment rendered could not have been given without deciding it."
>
> *Lynch v. New York*, 293 U.S. 52, 54, (1934).

It is submitted that the observations in the original decision concerning the distinction as to signatures between the type of instrument covered by the State Negotiable Instruments Law and that circulated as currency by the Government were unnecessary and illustrative only. The court's basic holding was that Appellee's cause of action did not rest upon his right to regain possession of an instrument, but to collect "an amount" due. Such

holding was an adequate non-federal ground and did not bear upon the "negotiability" of federal currency in any manner, either explicitly or impliedly.

Therefore, the state court did not hold or imply, even in its original decision, that federal currency was anything less than negotiable, but merely sought to illustrate that money was not **the type** of instrument intended to be covered by a state negotiable instruments law. The conclusion of the state court on this point is undoubtedly correct. The illustration selected by the court in its original opinion as to signatures may or may not have been appropriate, but it was not the law of the case. This much is obvious from the opinion of the Court of Appeals on rehearing, where it made crystal clear that its original comments regarding the significance of a lack of a signature on currency were directed at distinguishing federal currency **as a type of instrument** from commercial paper insofar as the latter is defined in the State's Negotiable Instruments Law. The court, on rehearing, after repeating that portion of the original opinion concerning signatures which had been so vehemently protested by Appellants in reargument, commented:

> "We are firmly convinced that United States currency and silver certificates are not **such instruments** as to come within the purview of the Negotiable Instruments Law, **possibly not for the reason stated in our original opinion, but for the reason that such are not commercial paper which this law was designated to cover.**"
>
> (Emphasis added) Opinion of the Court of Appeal on Rehearing; Appellants' Jurisdictional Statement, Page 37, Appendix A.

Thus, the court never intended to reflect on the negotiability, *per se*, of federal currency due to its lack

of a genuine signature, and it took particular pains on rehearing to emphasize this, even to the extent of commenting that its previous comments on this point were "possibly" no longer held. It is equally clear that the essential thrust of the decision was to uphold the validity of Article 2139 of the Louisiana Civil Code, which deals with obligations between persons, and not the negotiability of instruments, federally issued or otherwise, and therefore, no federal question was even impliedly passed upon, or raised by the state decision.

3. *Appellants Failed to Raise Any Federal Question in the Trial Court*

The record is devoid of any evidence that a federal question was properly raised in accord with Louisiana practice[13] before the Trial Court. In fact, the Appellants admit, on page 7 of their Jurisdictional Statement that they did not raise it in the lower court. The conflict between Louisiana Civil Code Article 2139 and 31 U.S.C. 462 was first mentioned in the Court of Appeal. Such procedure has been held insufficient by the United States Supreme Court where it conflicts with state practice.[14] The certificate of the presiding judge of the Court of Appeal of Louisiana (an intermediate court), to the effect that the alleged federal question was raised, considered and not mentioned for the reason that there was no conflict, does not in itself correct the failure of the Appellants under Louisiana law to raise the issue properly in the Trial Court. Had the Court of Appeal believed that a true conflict between federal and state

[13] Appellants should have, by affirmative averment, specifically pleaded the alleged unconstitutionality of Article 2139. *City of Shreveport v. Pedro*, 170 La. 351, 127 So. 865 (1930); *City of New Orleans v. Plotkin*, 205 La. 499, 17 So. 2d 719 (1944).

[14] *Radio Station WOW v. Johnson*, 326 U.S. 120, 128 (1944); *Herndon v. Georgia*, 295 U.S. 441, 443 (1934); *American Surety Co. v. Baldwin*, 287 U.S. 156, 163 (1932); *Forbes v. State Council*, 216 U.S. 396, 398 (1909); *Simmerman v. Nebraska*, 116 U.S. 54 (1885).

law existed, they would still have had the opportunity to decide, on the adequate non-federal ground, that the issue was not properly raised in the Trial Court, and therefore waived by Appellants.

Where the highest state court is completely silent on the federal question, as in this case, and the federal question was not raised at the proper point in the state court proceeding, the Supreme Court has expressly declined to exercise jurisdiction. *Mutual Life Insurance Co. v. McGrew*, 188 U.S. 291, 309 (1902). The silence of the Court of Appeal and the Louisiana Supreme Court on the alleged federal question may have been due to the procedural deficiency, in addition to the court's belief, as expressed by Judge Janvier in his certificate, that there was, in fact, no federal question. The Supreme Court has previously assumed that silence on the part of a state court under these circumstances is due to the procedural deficiency. *Bailey v. Anderson*, 326 U.S. 203, 206-7 (1945).

The jurisprudence of the Supreme Court on this point has been consistent in refusing to review cases where the federal question was raised as an afterthought.

In *Stembridge v. Georgia*, 343 U.S. 541 (1951), the court said:

> "It is apparent from the record that the Supreme Court of Georgia took no action upon the question of federal constitutional rights raised for the first time on motion for rehearing in the Court of Appeal. This was in accord with its rule that constitutional questions must be raised in the trial court. * * *
>
> "At this stage, the Supreme Court of Georgia could have denied certiorari on adequate state

grounds. **Where the highest court of the state delivers no opinion** and it appears that the judgment **might** [emphasis supplied here by the Supreme Court] have rested upon a non-federal ground, this court will not take jurisdiction to review the judgment. [Citing eleven cases here.]

"The amending order of the Georgia Court of Appeals does not, in our view, change the posture of this case— it does not remove **the strong possibility** in the light of Georgia law that the Supreme Court of Georgia **might** have rested its order on a non-federal ground. **We are without jurisdiction when the question of the existence of an adequate state ground is debatable.**"

(Emphasis added) *Stembridge v. Georgia*, 343 U.S. 541, 547, 548 (1951).

Appellee submits that this case falls precisely within the rule of law announced above and therefore should be dismissed for the additional reason that the judgment of the Louisiana Supreme Court, refusing to grant the petition for certiorari, as well as the action of the Court of Appeal, might have rested upon the state ground of failure to raise timely the alleged federal question in the Trial Court.

V.

CONCLUSION

Title 28, Section 1257 (2), under which this appeal is brought, allows an appeal, "Where is drawn in question the validity of a statute of any state on the ground of its being repugnant to the Constitution, treaties or laws of the United States, and the decision is in favor of its validity."

However, it is clear that the decision of the state court enforcing an obligation to pay an amount owed

under a state statute dealing solely with individual obligations had no effect, express or implied, upon federal currency or its "negotiability." Hence, the alleged federal question was not passed upon for the excellent reason that there was no conflict to pass upon, in addition to the failure of the Appellants to timely raise the issue. The state court's decision rested solely on state grounds which were not repugnant to any law of the United States. In the language of Justice Jackson, "This court from the time of its foundation has adhered to the principle that it will not review judgment of state courts that rest on adequate and independent grounds." [15]

[15] *Herb v. Pitcairn*, 324 U.S. 117, 125 (1945).

Wherefore, Appellee respectfully prays that this motion to dismiss this appeal be granted.

Respectfully submitted,

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LAWRENCE J. MOLONY,
Of Counsel:

CERTIFICATE

I hereby certify that I have served the attorneys for the Appellants, Mr. Edwin F. Marx and Mr. William M. Lucas, Jr., of Dufour, St. Paul, Levy and Marx, 1006 National Bank of Commerce Building; Mr. Richard L. Voelker, Jr., of Owens, Levy & Voelker, 401 National Bank of Commerce Building; and Mr. Howard W. Lenfant of Lenfant and Villere, 910 Richards Building, all in New Orleans, Louisiana, with a copy of the motion to dismiss and a copy of the brief in support of said motion, by depositing same in the United States mail, postage paid, addressed to each of their offices on this ..... day of April, 1961.

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